IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

Crl.MC.No. 4022 of 2006()

CC.246/2006 of MUNSIFF-MAGISTRATE COURT, ERATTUPETTA

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PETITIONER: ACCUSED

N.R.JAGADEESH, S/O. RAMAN,
NELLIYAMIKUNNEL, EZHACHERI P.O.,
RAMAPPRSM.

BY ADV. SRI.A.K.HARIDAS

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. JAMES JOSEPH, S/O. JOSEPH,
VAYALIL VEEDU, ANTHINADU P.O., PALAI.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.4022 of 2006

Dated this the 12th day of December 2006

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. The signatures are admitted. The petitioner prays that the prosecution initiated against him may be quashed by invoking the powers under Section 482 Cr.P.C.

2. What is the reason? The defence of the accused on that aspect is not revealed. The short contention raised is that the notice of demand issued to the petitioner is not adequate, sufficient or legal. The contention is that the cheque was issued to the address of the petitioner in India but the petitioner had left India before that date. This, in short, is the only contention.

3. I am certainly not persuaded to agree that this is a sufficient reason to justify invocation of the powers under Section 482 Cr.P.C to quash the proceedings. The petitioner must raise the contention in defence. I do not want to express any opinion on the acceptability of the defence raised. Suffice it to say that I do not find any reason to invoke the powers under Section 482 Cr.P.C and quash the proceedings. This Criminal Miscellaneous Case is in these circumstances deserves to be dismissed. I may, however hasten to

observe that the dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to raise all appropriate and relevant defences before the learned Magistrate, who shall consider the same on merits.

4. Finally, the learned counsel for the petitioner submits that coercive processes have been issued by the learned Magistrate to secure the presence of the petitioner. The petitioner is willing to appear before the learned Magistrate and apply for bail. He is expected in India shortly. If and when he appears and applies for bail, the learned Magistrate may be directed to release him on bail, it is prayed.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the cause to be urged by the petitioner on merits in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient General directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

6. In the result, this Crl.M.C is dismissed but with the

specific observation that if the petitioner appears before the learned Magistrate and applies for bail, after giving sufficient prior notice to the learned Public Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself unless there are compelling reasons.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006